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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,525	07/10/2003	Yen-Fu Chen	AUS920030419US1	3553

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EXAMINER

RICHMAN, GLENN E

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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02/03/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/617,525
Filing Date: July 10, 2003
Appellant(s): CHEN ET AL.

Robert Wilder
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/27/08 appealing from the Office action mailed 8/4/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

7,056,265	Shea	6-2006
6,949,052	MILLINGTON et al	9-2005

(9) Grounds of Rejection

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The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 6, 9-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shea.

Shea discloses receiving identification (ID) signals at one of said workout stations (col. 7, lines 52-57), said ID signals being representative of an individual user (col. 7, lines 52-57), said receiving is accomplished by receiving ID signals at a reading device located at said workout station, said ID signals being generated by an initial reading of a code contained on an article carried by said individual user (col. 7, lines 52-57), measuring workout data generated by said workout station (col. 23, lines 7 – et seq.), and said individual user at saving said workout data to a workout data file associated with said individual user when said user has finished using said workout station (col. 23, lines 7 – et seq.), said workout data file is maintained at a server within said workout facility (fig. 3).

Shea does not disclose swiping the card a second time at completion of the workout at that station, however it would have been obvious to one skilled in the art to include this step since Shea recognizes that an indication should be made that the exercise has stopped– either by the time elapsed or the pressing a of a STOP key (340,

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col. 23, lines 15-20). A second swiping would be an alternative to the pressing of a STOP key.

As for claims 5 and 6, Shea further discloses said receiving is accomplished by receiving ID signals at a reading device located at said workout station, said ID signals being generated by an initial reading of a code contained on an article carried by said individual user (col. 7, lines 52-57), said code is a bar code readable by an wherein said code is optical reading device (col. 7, lines 52-57), said code is a magnetic code on a medium readable by a magnetic code reading device (col. 7, lines 52-57),

As for claims 9-17, Shea further discloses displaying said workout data on a display device located at said workout station (col. 8, lines 53 – et seq.), displaying said workout data file of said individual user on a display device located at said workout station (col. 9, lines 37 – et seq.), said workout data file further includes a workout routine for said individual user, said workout routine including specific workout protocols for said individual user at each of said plurality of workout stations (col. 15, lines 55 – et seq.), displaying said specific workout protocols for said individual user on said display devices at workout stations being used by said individual user (col. 15, lines 55 – et seq., col. 26, lines 14-38), saving workout data from a stations to said workout data file (col. 26, lines 14-38), enabling reservation of selected workout stations by said individual user (col. 26, lines 38-40), displaying notice of said reservation of a reserved workout station at a display device located at said reserved workout station (col. 26, lines 38 – et seq.), disabling said reserved workout station, said reserved workout

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station being selectively enabled by said receiving of said ID signals associated with said individual user at said reserved workout station (col. 26, lines 38 – et seq.).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 7, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shea in view of Millington.

Shea does not disclose said receiving is accomplished by receiving ID signals transmitted from a transmitter device carried by said individual user.

Millington discloses receiving is accomplished by receiving ID signals transmitted from a transmitter device carried by said individual user (col. 9, lines 37-57).

It would have been obvious to use Millington's means for transmitting with Shea's exercise device, as it is well known as taught by Millington, to use a transmitter for transmitting an ID signal, and as Shea discloses various means for transmitting an ID signal.

Millington does not specifically disclose determining when said individual user has finished using said workout station, said determining being accomplished by detecting an absence of said transmitted ID signals at said workout station, however it is inherent the individual is finished when signals are no longer received.

As for amended claims 18 and 19, Shea discloses receiving a request from a user to schedule a workout session using said workstations at said workout facility (fig. 15D); enabling user access to a facility workout schedule for workout stations within said workout facility col. 5, lines 3 – et seq.; receiving scheduling input from said user col. 27, lines 38 - et seq., said scheduling input defining a user workout schedule for said user at said workout facility col. 27, lines 38 - et seq.; storing said user workout schedule at a workout server used by said workout facility col. 27, lines 38 - et seq.; reserving workout stations scheduled by said user to enable only said user to use workstations at times designated in said user workout schedule col. 27, lines 38 - et seq.

Millington discloses detecting when said user enters said workstation facility by detecting a user identification (ID) signal transmitted from a device carried by said user (col. 9, lines 37-57);

Shea discloses storing information indicating a presence of said user at said workout facility in response to said detecting col. 27, lines 38 - et seq.; determining when said user is in proximity to a first workout station scheduled for use by said user col. 27, lines 38 - et seq.; displaying said user workout schedule on a display viewable by said user from said first workout station in response to said determining col. 27, lines 38 - et seq.; collecting workout data of said user while said user is working at said first workout station col. 23, lines 7 – et seq., determining when said user departs from said first workout station col. 27, lines 38 - et seq.; updating said user workout schedule by recording said workout data of said user collected at said first workout station after said

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user has departed from said first workout station (col. 23, lines 7 – et seq.); terminating said displaying after said determining that said user has departed from said first workout station col. 27, lines 38 - et seq.; and enabling other users to use said first workout station after said user has departed from said first workout station col. 27, lines 38 - et seq., and scheduling input is received from a user wireless device, said user wireless device being located remotely from said workout server fig. 3, col. 5, lines 3 – et seq.

(10) Response to Argument

1. It is submitted that the cited KSR case cannot be properly applied to the facts of the present application. In the Final Office Action, the Examiner cites the KSR case and states that "since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 USC 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement" It is submitted that applicant has established that the inventive combination created by the applicant is "uniquely challenging and difficult for one of ordinary skill in the art" as specifically stated beginning on page 1, line 24 through page 3, line 15, inter alia, of the present application. Further, it is noted that the present invention has not been rejected under 35 USC 102 and therefore the present invention is not anticipated by the references, and there are differences between the prior art and the present invention. Since inventors Shea and Millington, both of whom, by definition are skilled even

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beyond "one of ordinary skill in the art", endeavored but were unable to anticipate the present invention, it is submitted that the present invention must have been "uniquely challenging and difficult for one of ordinary skill in the art" since proven inventors Shea and Millington were unable to produce the present invention.

As to 1 above, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

It also appears the applicant is arguing there is no reason to combine Shea and Millington, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art would have been motivated to combine the teachings of Millington with Shea as they are both from related fields and are similar types of exercise equipment.

2. The Examiner in rejecting the claim under 35 USC 103(a) referencing only the Shea reference, admits that Shea does not disclose swiping the card at the completion of the workout but states that it would have been obvious to do so and that to do so is the same as pushing a "STOP key". It is respectfully submitted that the two are not alternatives since a swipe of the card gives a positive input and identifies the user whereas a STOP key can be inadvertently pushed or not pushed at all and does not give a positive indication that a particular user has finished using a particular workstation. Therefore, it cannot be "obvious" to use a card swipe in place of a STOP key since much more certain information is and may be transmitted using the card swipe which is not possible using only a STOP key. The ID information is necessary in progressing through the workout schedule contained in the server for the identified user and such information cannot be confirmed using only a STOP key. Thus the second use of an ID card is substantially different from the mere use of a STOP key - the two methods perform substantially different functions. The Shea reference does not even recognize the need for a positive ID input at the end of the user of a workout station much less disclose or suggest its use, and thus it is respectfully submitted that claim 1 is allowable under 35 USC 103(a) over Shea.

3. Claim 17 is an independent claim directed to a medium programmed to provide operating signals to implement the method set forth in claim 1. Claim 17, as does claim I, contains the language "determining when said individual user has finished using said 400 workout station, said determining being accomplished by detecting when said ID signals are read for a second time at said workout station ...". Thus, for the

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reasons set forth above with respect to claim I, it is respectfully submitted that claim 17 is also allowable under 35 USC 103(a) over Shea.

4. With regard to the rejection of claims 3, 7, 18-19 as being unpatentable under 35 USC 103(a) over Shea in view of Millington, it is initially noted that claims 3 and 7 are dependent claims ultimately depending from and including all of the limitations of claim 1, in addition to even further limitations as set forth in the individual claims themselves. Neither Shea nor Millington suggest the "second swipe" positive input limitation discussed 414 above, for the reasons stated above, it is submitted that claims 3 and 7 are also allowable under 35 USC 103(a) over Shea, even in further view of Millington.

As to 2, 3 and 4, above, as discussed in the rejection above, the only step missing in Shea is swiping the card a second time, which would have the same result as pressing a stop key, as the same result is achieved. Furthermore Shea does recognize the need for a positive ID input at the end of user workout, by prompting the user to perform another exercise at the completion of the prior one (col. 11, lines 1-7).

5. Claims 18 and 19 are also believed to be allowable over Shea in view of Millington. Many of the Examiner's references to the cited art do not disclose what the Examiner asserts they disclose, especially with regard to detailed claims 18 (inter alia, detect when user enters workout facility and storing info reflective thereof).

As to 5 above, Shea discloses an identification card that detects when a user is an exercise terminal which can be considered the workout facility and/or in the workout facility (col. 21, lines 56-67).

6. Further, in the Office Action the Examiner cites a "Miller" reference and there is no "Miller" or corresponding patent number in the listing of cited references. It cannot be assumed that the Examiner intended to cite the Millington reference instead of Miller since the cited passage (col. 9, lines 37-57) contains no mention of "detecting when a user enters said workstation facility .." (Emphasis added) as is disclosed (1505, Figure 15, page 9, line 29 and Figure 4) and claimed (claims 18 and 19) in the present application.

As to 6 above, examiner apologizes for the obvious typo of Miller instead of Millington. However as applicant stated Millington was reviewed for the stated passage. Examiner does disagree that Millington does not disclose " detecting when a user enters said workstation facility", for Millington discloses in stated passage "As shown in FIGS. 3 and 4, a user could have a wireless identification tag 132 which may be embedded in a workout glove, weight belt, or a separate tag which communicates the individual user code 112 to each piece of exercise equipment which is used by the user, or alternatively, similar to the transmission of repetitions, the identification tag may transmit the user identifier 112 to the receiver assembly 14 and/or central processor 56. Additionally or alternatively, all exercise done may be transmitted to a processor 134 of the identification tag and/or the central processor 56 that may log and compile an exercise report for

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each person working out identified by the wireless identification tag."

The user's wireless ID tag being which is recognized by the exercise equipment being the equivalent of" detecting when a user enters said workstation facility"

7. With regard to claim 19, since neither Shea nor Millington discloses or suggests a system in which a user is enabled to input a workout schedule from a wireless device located remotely from the workout server as claimed in claim 19. The present invention enables a user to set-up his or her own workout schedule using a wireless device from outside of a workout facility and the input schedule is implemented and tracked upon detection that the user has entered through the entrance of the workout facility. Neither Shea nor Millington disclose or even remotely suggest this methodology.

As to 7 above, claims 19 reads as follows" scheduling input is received from a user wireless device, said user wireless device being located remotely from said workout server".

Shea discloses the exercise machines can be scheduled for future use by the exerciser using a communication link (claim 11), and that the communication link can be wireless (col. 3, lines 3-20). It is therefore obvious that a scheduling input can be received using a wireless device remote for a workout server.

(11) Related Proceeding(s) Appendix

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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Glenn Richman/

Primary Examiner

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